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## **OLR Bill Analysis**

### **sSB 706**

#### ***AN ACT CONCERNING MUNICIPAL AUTOMATED TRAFFIC CONTROL SAFETY DEVICES AT CERTAIN INTERSECTIONS.***

#### **SUMMARY:**

This bill authorizes municipalities with a population of more than 60,000 to use “automated traffic enforcement safety devices” (red light cameras) to record vehicles that illegally drive through red lights. These cameras must be capable of recording a still photograph, video image, or combination of these, of the rear of a motor vehicle, or a vehicle being towed by another vehicle, including an image of the rear license plate. The cameras also must indicate on at least one image the date, time, and place where the action occurred.

The bill specifies how towns may operate and enforce a red light camera program, establishes legal defenses to charges based on images the cameras record, bars the use of these images for certain purposes, and requires that towns report data they collect to the Program Review and Investigations Committee (PRI).

EFFECTIVE DATE: October 1, 2011

#### **ORDINANCES ESTABLISHING CAMERA PROGRAMS**

Under the bill, a municipality with more than 60,000 people may, on the approval of its chief executive officer and legislative body, adopt an ordinance authorizing the use of red light cameras to enforce traffic control laws. The bill prescribes the form municipal ordinances must take and requires municipalities, before enforcing red light camera ordinances, to install signs warning of the cameras at intersections where they are installed.

The ordinance must specify that:

1. a motor vehicle owner (the person to whom the vehicle is

registered) violates the ordinance if a red light camera produces a recorded image or images of a motor vehicle (apparently the owner's) or of a vehicle towing another vehicle, driving through a red light;

2. the vehicle owner may claim as a defense that he or she was not
  - (a) the person having care, custody, or control of the vehicle or
  - (b) identified as the driver, at the time the violation occurred;
3. violators may pay the penalty and associated fees electronically, and;
4. a local police officer or designated employee of a vendor must review and approve the recorded images before a notice of violation can be mailed to a vehicle owner. Under the bill, a vendor is someone who (1) provides services to a municipality under the bill; (2) operates, maintains, leases, or licenses red light camera systems; or (3) is authorized to review and assemble the recorded images the cameras take. The bill specifically bars the state or any traffic authority from regarding a vendor as providing or taking part in private investigative services. It is not clear what effect this provision has.

### ***Penalties***

The ordinance must impose a civil penalty of at least \$124 and may impose fees for the electronic processing of the penalty. Under the ordinance, a municipality may use revenue from the penalty to defray the costs of installing, operating, and maintaining red light cameras. It must distribute any remaining funds as follows:

1. 70% to be deposited in the municipality's general fund or another municipal fund the chief executive officer and legislative body determine and
2. 30% to be paid to the state treasurer.

The treasurer must deposit half the amount she receives (15% of the total) in the General Fund, to be credited to the Department of Social

Services for services for people with traumatic brain injury, and the remaining half (15% of the total) in the Special Transportation Fund.

Under the bill, a legal challenge to implementation of a red light camera program or adoption of an ordinance must be filed within 30 days of the ordinance's passage (see COMMENT).

#### **NOTIFICATION AND PAYMENT PROCEDURE**

The municipality or its authorized agent must notify a vehicle owner of a violation by first class mail, postmarked no more than (1) 30 days after it obtains the vehicle owner's name and address and (2) 60 days after the date of the alleged violation. The notice of violation must include:

1. the owner's name and address;
2. the vehicle's license plate number;
3. the violation charged;
4. the date, time and intersection location where the violation occurred;
5. a copy of the recorded image or information on how to view the recorded image electronically;
6. a statement or electronically generated affirmation by a designated employee of a vendor or local police officer who has reviewed the image and determined that a violation occurred;
7. the amount of the penalty; and
8. the deadline for paying the penalty if the owner (a) elects not to contest the violation and (b) chooses to avoid paying court costs.

The bill does not explicitly require the notice to inform the recipient or his or her right to request a hearing (see below).

Under the bill, the owner must pay the penalty no more than (1) 30 days after the "issuance date of the violation," (apparently the date

notice of violation was mailed) if he or she is not raising a defense to the charge or (2) 45 days after this date if such a defense requires that the notice be sent to someone else. It is unclear how a defense could “require” that notice be sent to someone else. This may mean that the recipient claims that he or she was not the driver or did not have care, custody, or control of the vehicle. But if the defense is valid, it is unclear why the recipient would have to pay a penalty.

## **DEFENSES TO AN ALLEGED VIOLATION**

### ***Operation by a Lessee as a Defense***

Under the bill, it is a defense to an alleged violation if the owner provides the municipality or its agent an affidavit, signed under penalty of perjury, that:

1. establishes him or her as the owner of a motor vehicle renting or leasing business at the time of the alleged violation;
2. establishes that someone other than the owner or the owner’s employee had custody of the vehicle under a rental contract of 60 days or less at such time; and
3. gives the traffic authority, court, or municipal agent the name and address of the lessee (see COMMENT).

It is unclear whether the requirement for owners to “establish” the fact in numbers 1 and 2, above, constitutes more proof than an assertion of these facts, which is what most affidavits require.

Under the bill, the affidavit creates a rebuttable presumption that the lessee was operating the vehicle at the time the violation occurred. The municipal traffic authority, court, or municipal agent must mail or electronically send the lessee a notice of the citation (apparently the same as a notice of violation). The notice must contain (1) the information included in the original notice sent to the vehicle owner, (2) a statement that the owner has identified the recipient as the person in control or custody of the vehicle at the time of the violation, and (3) a statement that the recipient may also claim, in his or her defense, that someone else had custody or control of the vehicle when the violation

occurred.

### ***Theft as a Defense***

The owner can also defend against the charge by giving the traffic authority or court an affidavit, signed under penalty of perjury, that (1) he or she was not operating the vehicle at the time of the alleged violation and providing the name and address of the driver at the time or (2) either the vehicle or its license plate was stolen before the alleged violation occurred. The owner also must submit proof that a police report has been filed concerning the theft.

Under the bill, proving the above factors establishes a rebuttable presumption that the person identified in the affidavit was operating the vehicle at the time the violation occurred. The municipal traffic authority, court, or municipal agent must mail a notice of the citation to that person. The notice must contain all the information included in the original notice and a statement that the owner has identified the notice's recipient as the person driving the vehicle at the time of the violation. It is not clear how this would apply in the event of a stolen vehicle or license plate where the thief's identity is unknown.

### ***Other Defenses***

The following are also defenses to allegations of violating a red light camera ordinance, provided the camera's recording verifies it:

1. the traffic signals were not working properly; or
2. the driver was (a) obeying a lawful order or direction from a law enforcement officer, (b) yielding the right of way to an emergency vehicle, or (c) taking part in a funeral procession.

A driver of an authorized emergency vehicle may also claim as a defense that he or she drove through a red light only after slowing down as necessary to operate safely. Finally, a driver may claim as a defense that a police officer has issued the driver a citation for the same violation for which he or she received notice under the bill.

The bill indemnifies a designated employee (presumably, of the

vendor) or local police officer for any loss while acting in the scope of his or her employment with regard to the bill or any ordinance enacted under it. The bill is silent on the type of loss to which it refers, and the indemnification appears more sweeping than is generally provided in law. By law, municipalities must indemnify municipal officers and employees from financial loss, including legal fees and costs arising from claims of negligence or infringement of civil rights by the officer or employee in the discharge of his or her duties. Indemnification does not extend to employees who act maliciously, wantonly, or willfully (§ 7-101a).

### **REFERRALS TO DEPARTMENT OF MOTOR VEHICLES**

Under the bill, if a person to whom notice of violation has been sent has neither paid the violation (apparently, the penalty) by the applicable deadline nor announced his or her intention to contest the charge, a municipality must send the vehicle owner notice that (1) it will notify the Department of Motor Vehicles (DMV) if the penalty is not paid within 30 days and (2) DMV will not renew his or her registration if the owner does not pay the penalty. By law, registrations are valid for two years. Thus, in some cases, it could take nearly two years before a refusal to renew a registration takes effect.

The municipality must send DMV the referral no later than 30 days after sending the owner the above notice if the penalty has still not been paid or the violation contested. The referral must include

1. information concerning the motor vehicle's license plate number and year of registration, and the name of the vehicle owner;
2. the date of the violation;
3. the date when notice was mailed to the owner; and
4. the seal of the local authority.

DMV must refuse to renew the registration. It must notify the vehicle owner why it is not renewing it and of the steps the owner

must take to reinstate it. DMV must reinstate the registration upon (1) proof that the violation notice (apparently the penalty) has been paid and (2) payment of a reinstatement fee, if applicable. By law, DMV does not charge a registration reinstatement fee.

## **HEARING PROCESS**

The municipality's chief executive officer must appoint at least one traffic control signal violation hearing officer to conduct hearings. A hearing officer cannot be a police officer or police department employee.

Anyone asserting a defense and requesting a hearing must receive written notice of the hearing's date, time, and place. (The bill does not specify how someone asserts a defense or requests a hearing.) A hearing must be held between 15 and 30 days after the hearing notice is mailed, but the hearing officer may continue it at the reasonable request of an interested party. A defendant seeking to contest his or her liability must appear at the hearing and may present evidence on his or her behalf. But the bill also allows a hearing officer to accept copies of police reports, DMV records, and other official documents by mail from the alleged violator and to determine whether it is necessary for the alleged violator to appear.

The bill deems an original or certified copy of the initial notice of violation a business record for evidentiary purposes and requires the town to file and retain it. The police officer who authorized issuance of the citation must attend the hearing if requested. However, the bill does not require a police officer to authorize a citation. It allows a police officer or designated employee of the vendor to (1) review and approve the camera's recorded image before notice can be mailed and (2) review the image and determine that the motor vehicle violated the ordinance.

A town official, other than the hearing officer, may present evidence on the town's behalf. If the alleged violator does not appear, the hearing officer may enter an assessment by default against him or her after finding that he or she was properly notified and committed the

violation. The hearing officer must conduct the hearing as he or she deems appropriate and fair. Rules of evidence do not strictly apply, but all testimony must be given under oath or affirmation. The hearing officer must announce the result at the end of the hearing. If the hearing officer finds the alleged violator is not liable, he or she must dismiss the matter and enter that finding in writing. If the hearing officer finds the person liable, the hearing officer must assess the fines, penalties, costs, or fees as provided by applicable ordinances.

Under the bill, a traffic violation captured by a red light camera is neither an infraction, moving violation, nor a violation; the Centralized Infraction Bureau cannot process it, nor can it be reported to DMV for inclusion on a driver's record. It cannot be counted towards points on a person's driving record.

#### **REPORTING REQUIREMENT**

By October 1, 2012, or 12 months after implementing a red light camera program, each municipality doing so must submit a report to PRI. The report must include a comparison and analysis of the number:

1. of red light violations that occurred at intersections where red light cameras were used, before and after they were installed;
2. and type of related traffic violations and accidents at these intersections, before and after the cameras were installed; and
3. of traffic violations and related violations and accidents occurring at the intersections where cameras were used and at intersections where they were not used.

The report must also describe:

1. situations where camera results could not be, or were not, used;
2. the number of leased, out-of-state, or other vehicles, including trucks, where enforcement efforts failed;
3. the amount of revenue from fines retained by the municipality;



4. the cost of the program to the municipality; and
5. such other information the municipality deems important.

The bill does not state what PRI must do with these reports.

## **BACKGROUND**

### ***Towns with 60,000 or More People***

According to 2010 U.S. Census data, the following 13 Connecticut municipalities had 60,000 or more people: Bridgeport, Bristol, Danbury, Greenwich, Hamden, Hartford, Meriden, New Britain, New Haven, Norwalk, Stamford, Waterbury, and West Hartford.

## **COMMENTS**

### ***Standing to Bring Legal Challenge***

The bill requires a legal challenge to a red light camera program or ordinance to be brought within 30 days of the ordinance's passage. This would limit the ability of a person to get redress if he or she was aggrieved by the ordinance more than 30 days after its passage.

### ***Traffic Authority or Court***

The bill requires recipients of violation notices to provide information to the "traffic authority" or court (2 (g) and (i)) and in other places requires these entities to send notices (2(h)). However, the bill does not give any court jurisdiction over these matters and does not define "traffic authority."

The bill also contains conflicting provisions on the parties responsible for sending violation notices. In §2 (e) the municipality or its authorized agent sends the notice. In § 2 (j) the "traffic authority," "court," or "municipal agents" sends the notice.

## **COMMITTEE ACTION**

Transportation Committee

Joint Favorable

Yea 25      Nay 11      (03/18/2011)